

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 1281 of 2024

With

CAN 1 of 2024

The Oriental Insurance Co. Ltd.

-Vs-

Mirja Raja Hossain & Anr.

And

COT 132 of 2024

Mirja Raja Hossain

-Vs-

The Oriental Insurance Co. Ltd. & Anr.

For the Appellants : Ms. Gopa Das Mukherjee

For the Respondents : Mr. Krishanu Banik

Heard on & Judgment on : 07.05.2025

Ananya Bandyopadhyay, J.:-

1. The instant appeal was heard earlier and judgment was reserved.

However, the matter was listed under the heading "For Hearing" for further clarification.

2. The Learned Advocates representing the respective parties are present.

3. The claimant being the victim filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, 2nd Court, Suri, Birchum being MAC Case No.150/2017, claiming an award of Rs.

15,00,000/- along with interest payable from the date of filing the case whereby the victim was injured due to a road traffic accident on 21/03/2017. The offending vehicle, bearing Registration No. WB42P-6060 hit the aforesaid deceased in a rashly and negligently being a pedestrian. The victim was first taken to Suri Sadar Hospital, from where he had been referred to Burdwan Medical College and Hospital. As his condition was critical, he had subsequently been shifted to Mission Hospital, Durgapur, where he had undergone extensive treatment and surgeries through multiple admissions. He had also been admitted at Swastik Hospital for further medical care. On the basis of a complaint, Suri P.C No. 100/17 was initiated against driver of the offending vehicle on 27/03/2017.

4. The owner of the offending vehicle appeared and filed a written objection however, did not contest the case subsequently which ex parte against him.
5. The respondents, The Oriental Insurance Co. Ltd. contested the aforesaid MAC case.
6. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidence and awarded a sum of Rs. 28,63,134/- as well as an interest of 9% from the date of filing the case till the realization of the amount.
7. The Learned Advocate representing the Appellants/claimants submitted that the disability suffered by the victim/claimant had not been considered. The principles in Raj Kumar Vs. Ajoy Kumar reported in

2011(10 TAC 785 were not followed. The income of the victim was computed erroneously. The learned Tribunal did not assess the percentage of the disability towards loss of earning capacity of the victim/claimant/respondent. There had been a gross mistake in allowing Rs. 10,000,000/- in different heads after computing of the compensation amount.

8. The Advocate representing the Respondent argued as follows:

a. The Learned Tribunal Judge was wrong in assessing the monthly income of the victim/injured as Rs. 5000/- per month instead of Rs. 8,876/- per month as per Minimum Wages Act (pertaining to the synopsis of Minimum Rates of Wages in Scheduled Employments in West Bengal as on 01.01.0217) while passing the impugned award challenged in the present appeal.

b. Reliance was placed on the following decisions:

(i) 2024(2) TAC 706 (SC) Roshan Lal Vs. New India Assurance Company Ltd.

(ii) (ii) R. D. Hatangadi Vs. Pest Control (India) Pvt. reported in AIR 1995 (SC) 755 1995 (1) TAC 557

(iii) (iii) Govinda Yadav Vs. New India Assurance Company Ltd. reported in 2012 ACJ 28 2012 (1) TAC 1 (SC)

(iv) (iv) New India Assurance Company Ltd. Vs. Gajendra & Ors. reported in 2017 ACJ 2834

(v) (v) Sidram Vs. The D.M. United India Insurance Company Ltd. & Anr. reported in 2022 Supreme (SC) 1169 2022 ACJ 2611

(vi) (vi) National Insurance Company Ltd. Vs. Pranay Sethi and others reported in 2017 ACJ 2700.

9. Considered the rival submissions of the Learned Advocates representing respective parties.

10. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to the extent of assessment of monthly income. The victim claimed to have worked as a 'mason' and his monthly income could be considered to be Rs. 7500/ per month in the year of his accident i.e. 2017 which was not be improbable. The victim suffered disability to the extent of 60% as per the Medical Board. It is modified to 100% on the basis of documents on record and the oral evidence.

11. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr.¹ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.². The impugned award of Rs. 28,63,134/- - is modified as follows:

Monthly Income	Rs. 7500/-
Annual Income (Rs. 7500 x 12)	Rs. 90,000/-
Future Prospect to be added (25%)	Rs. 22500/-
	Rs. 1,12,500/-

¹ 2017(4) TAC 673 (S.C.)

² (2009) 6 SC 121

	Rs. 1,12,500/-
Loss of income assessed as 100%	Rs. 1,12,500/-
Multiplier to be "14" (Rs. 1,12,500 x 14)	Rs. 18,63,960/-
Medical Expenses	Rs. 8,13,134/-
Expenses for conveyance i.e. Ambulance	Rs. 1,00,000/-
Etc. nursing and special diet	
Future Medical Expenses	Rs. 1,00,000/-
Compensation for pain and suffering	Rs. 3,00,000/-
Compensation for disability and	Rs. 2,00,000/-
disfigurement	
Entitlement	Rs. 36,02,094/-

12. The learned Advocate representing the appellant/Insurance Company submits to have deposited a sum of Rs. 40,31,293/- =(Rs. 25,000 + 40,06,293/-) through two separate cheques as per challan filed by the Learned Advocate representing the appellant/insurance company
13. The Respondent Nos. 1 /claimant is entitled to receive the amount of Rs. 36,02,094/- at the rate of 6% per cent per annum from the date of filing of the claim application till the date of actual realization.
14. The office of the learned Registrar General High Court at Calcutta, shall encash the cheques and thereafter disburse the entire awarded amount so deposited along with accrued interest to the present respondent Nos. 1 /claimant as mentioned in the impugned judgment and order passed by the Motor Accident Claims Tribunal, 2nd Court, Suri, Birchum being MAC Case No.150/2017 on proof of proper identification of the respondent No.1 /claimant subject to payment of ad valorem Court fees and refund the balance amount, if any, through a cheque to the Learned

Advocate for the Appellant/Insurance Company for the accounts of the insurance company.

- 15.The instant appeal and cross objection are disposed of accordingly.
- 16.The pending applications, if any, stands disposed of.
- 17.Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)